

**05-848 ENVIRONMENTAL DEFENSE, ET AL., V. DUKE ENERGY CORP., ET AL.**

**QUESTIONS PRESENTED**

1. Whether the Fourth Circuit's decision violated Section 307(b) of the Act, which provides that national Clean Air Act regulations are subject to challenge "only" in the D.C. Circuit by petition for review filed within 60 days of their promulgation, and "shall not be subject to judicial review" in enforcement proceedings, 42 U.S.C. 7607(b); and
2. Whether the Act's definition of "modification," which turns on whether there is an "increase" in emissions and which applies to both the NSPS and PSD programs, rendered unlawful EPA's longstanding regulatory test defining PSD "increases" by reference to actual, annual emissions.

Cert. Granted 5/15/06